

C-116

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July 19, 2006

David R. Tuthill
Junior Administrator, Water Management Division
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

Re: Additional Instructions to Water Master of W.D. 34 - Big Lost River

Dear Mr. Tuthill:

We have been asked by our clients to comment on the Water District 34 Guidelines for Operation which were updated June 30, 2006. We wish first to express their appreciation for the efforts of the Department in doing so. Those efforts have been substantial, and in our opinion, provide much better written direction for the Water District, the Water Master and his staff.

Our major concern is the proper understanding and implementation of these guidelines and the important principals contained therein and the actual practices carried on by the Water Master and his assistants in Water District 34. We believe some hands-on training by Department officials, actually being physically present to work with the Water Master and his staff to show them how to apply the guidelines is probably essential.

So far as possible improvements to the draft guidelines, we suggest there are some important sentences that should be put in bold print in the hopes that the statements will not be ignored. For example, we would do so with the third sentence of 3.4.1, all of 3.5.4 and the fourth and fifth sentences of 7.7.4. We think it could be helpful to list the storage rights of Big Lost River Irrigation District under 7.3 in order of priority instead of the order of the right numbers. We understand there has been a perception and sometimes a practice of filling the reservoir on the basis of the latest priority first rather than the oldest priority first. That needs to be clarified. We would also appreciate some further explanation of the proper administration of the exchange involving 34-00013 so the Water Master knows specifically what to do under what circumstances. We understand the Antelope Creek headworks cross-over into the Three-in-One

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Ditch will accept far less than 100 cfs, the amount of the right. This year when that ditch was being completely filled with water from Antelope Creek, the Water Master refused to allow any excess to be used for recharge purposes. The reservoir was full; all the irrigation district's rights had been filled and yet the Water Master claimed the excess flows in Antelope Creek belonged to the irrigation district to be delivered as "free water" to whomever the irrigation district chose. This same practice of delivering "free" or "excess" water from the Big Lost River also creates accounting problems.

We understand there are up to five types of water rights which can be filled from the river during good water years; natural flow rights, storage rights, rotation credit, recharge rights, and additional flow (or excess flows which, upon proper application therefore, the Director can allow under Rule 40.06 as stated in 7.7.5). As we understand it, the concept of "free water" contemplates an illegal use of water. One of our main concerns is that all water types diverted from the public resource, whether or not they are delivered to water users, must be identified, measured and recorded. Assessments and voting are dependent upon the accuracy of this effort.

As we say, it seems to us complete implementation of the guidelines should be the first objective. The window of opportunity for measuring recharge or additional flows for 2006 has already closed. Because of experiences that occurred this year, we are extremely skeptical that appropriate identification of all types of water rights were made or that appropriate measurements were either made or recorded.

We have mentioned in previous correspondence that we think a meeting for the Water Master to report to the water users what has been done for the 2006 water year would be valuable. Perhaps such a meeting could be scheduled soon after the close of this irrigation season. IDWR could also report on its random verification of diversion measurements and the proper completion of the spreadsheet information to reassure the water users. If such a meeting were held well in advance of the annual water district meeting, there would surely be less confusion at the annual meeting. And, such a meeting would certainly help all concerned to determine whether there is a need for a hearing on Water Master removal.

Yours very truly,



Kent W. Foster

c: Nick Miller
Bob Duke, Water Master, Water District 34